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(2)

No. 08-953

In the Supreme Court of the United States

TERRANCE ROLLAND,

Petitioner,

vs.

TEXTRON INC.,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Eleventh Circuit erred in affirming the District Court's decision to strike Terrance Rolland's jury trial demand for his 29 U.S.C. § 1132(a)(1) and (3) claims?

2. Whether the Eleventh Circuit erred in affirming the District Court's decision that Terrance Rolland's state law fraud claim, which was preempted by ERISA, should not be reinstated after he failed to prove his ERISA claim?

CERTIFICATE OF CORPORATE DISCLOSURE STATEMENT

Pursuant to Sup. Ct. R. 29.6 the following is Respondent's Corporate Disclosure Statement.

Corporate Disclosure Statement

Textron does not have a parent corporation. A publicly-held corporation does not own more than ten percent (10%) of Textron's stock.

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BRIEF IN OPPOSITION

STATUTORY PROVISIONS INVOLVED

Question 1 involves the application of the Seventh Amendment to the Constitution of the United States, which reads in pertinent part as follows, "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . ."

Questions 1 and 2 involve the application of 29 U.S.C. § 1132(a)(1)-(3), a portion of the Employee Retirement Income Security Act ("ERISA"), which reads:

> (a) Persons empowered to bring a civil action
> A civil action may be brought –
> (1) by a participant or beneficiary –
> (A) for the relief provided for in subsection (c) of this section, or
> (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;
> (2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;
> (3) by a participant, beneficiary, or fiduciary;

> (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or
> (B) to obtain other appropriate equitable relief
> (i) to redress such violations or
> (ii) to enforce any provisions of this subchapter or the terms of the plan . . . .

Question 2 also involves the construction of 29 U.S.C. § 1144(a), a portion of ERISA, which reads:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title . . . .

STATEMENT OF THE CASE

Petitioner, Terrance Rolland ("Rolland"), was a former hourly employee of Respondent, Textron Inc. ("Textron"). On about February 22, 2005, Rolland initiated this action in the United States District Court for the Southern District of Georgia. Rolland claimed coverage under Textron's long-term disability plan ("Plan") and/or Textron misrepresented to Rolland that he was covered by the Plan. The Plan is a fully-insured plan. (Pet. App. 7.) Rolland pled his causes of action under both the Employee Retirement Income Security Act, 29 U.S.C. § 1001 (2006)("ERISA"), and Georgia state law.

On August 13, 2007, the District Court ruled on Textron's Motion for Summary Judgment and Motion to Strike Jury Demand. Rolland conceded his state law claims were preempted by ERISA and the District Court so concluded. (Pet. App. 53-54.) The District Court also granted Textron's Motion to Strike Rolland's Jury Demand. (Pet. App. 57.) Last, the District Court found a material factual issue existed as to whether Textron intentionally or fraudulently misrepresented to Rolland that he was covered by the Plan. (Pet. App. 56-57.)

The District Court held a bench trial on February 12 and 13, 2008, on Rolland's remaining

ERISA breach of fiduciary duty claim. On March 31, 2008, the District Court issued its decision concluding, among other things, that Textron was not acting as an ERISA "fiduciary" vis-à-vis Rolland with respect to the Plan. (Pet. App. 32-34.) The District Court also found that even if Textron was acting as an ERISA fiduciary, Textron's representations were not intended to deceive Rolland and Rolland did not reasonably rely thereon. (Pet. App. 34-39.) The District Court also concluded that even if: (a) Textron was acting as an ERISA fiduciary; (b) Textron had intentionally deceived Rolland; and, (c) Rolland reasonably relied thereon, he still would not have been entitled to benefits under Plan. (Pet. App. 39-42.) Rolland did not request the District Court to reinstate his preempted state law fraud claim.

On about April 22, 2008, Rolland appealed the District Court's decision to the United States Court of Appeals for the Eleventh Circuit. On January 2, 2009, the Eleventh Circuit issued a *per curium* decision denying, among other things, the two questions Plaintiff has presented to this Court for review. (Pet. App. 1-3.)

REASONS FOR DENYING THE WRIT

I. The Eleventh Circuit's Decision that Rolland is not Entitled to a Jury Trial Under ERISA does not Warrant Review by this Court.

Rolland's jury trial question does not warrant review because the Eleventh Circuit's decision is consistent with the unanimous appellate case law, the Seventh Amendment test and this Court's decision in *Great-West & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002).

A. The Eleventh Circuit's Decision is Entirely Consistent with the Unanimous Appellate Case Law and Decisions of this Court.

Although not dispositive, petitions are generally granted only for the compelling reasons set forth in Rule 10 of the Supreme Court Rules. Rolland's entitlement to a jury trial for his ERISA claims does not satisfy any of the standards.

ERISA's causes of action are set forth in § 1132(a)(1)-(6). At best, Rolland was a "participant" under the Plan. (Pet. App. 55-56.) Participants only have standing to sue under § 1132(a)(1)-(3). § 1132(a)(2) does not apply to Rolland's cause(s) of action because, among other things, he did not attempt to recover plan assets. *LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 U.S. _____, 128 S.Ct.

1020, 1026 (2008); *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 140-42 (1985). Thus, Rolland's claim and petition should only be analyzed under § 1132(a)(1) or (3).

Although this Court has not specifically decided whether jury trials are available under these two sections of ERISA, the Courts of Appeals have unanimously concluded that jury trials are generally not available under § 1132 and, in particular, § 1132(a)(1) or (3).[1] Rolland does not cite any contrary appellate case law.

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[1] *Hampers v. W.R. Grace & Co., Inc.*, 202 F.3d 44, 54 (1st Cir. 2000)(holding district court did not err in denying jury trial demand); *Tischmann v. ITT/Sheraton Corp.*, 145 F.3d 561, 568 (2d Cir. 1998)(holding no right to jury trial for § 1132(a)(1)(B) claims); *Sullivan v. LTV Aerospace & Def. Co.*, 82 F.3d 1251, 1258-59 (2d Cir. 1996)(holding no right to jury trial for § 1132(a)(1)(B) or (a)(3) claims); *Cox v. Keystone Carbon Co.*, 894 F.2d 647, 648-50 (3d Cir. 1990)(holding no right to jury trial for § 1132(a)(1)(B) or (a)(3) claims); *Phelps v. C.T. Enters., Inc.*, 394 F.3d 213, 222 (4th Cir. 2005)(holding no right to jury trial for § 1132(a)(1)(B) or (a)(3) claims); *Provident Life & Accident Ins. Co., v. Sharpless*, 364 F.3d 634, 640 (5th Cir. 2004)(holding no right to jury trial in ERISA equitable actions); *Borst v. Chevron Corp.*, 36 F.3d 1308, 1324 (5th Cir. 1994)(holding ERISA claims do not entitle a plaintiff to a jury trial); *Calamia v. Spivey*, 632 F.2d 1235, 1237 (5th Cir. 1980)(holding no right to jury trial for § 1132(a)(1)(B) or (a)(3) claims); *Wilkins v. Baptist Healthcare Sys., Inc.*, 150 F.3d 609, 616 (6th Cir. 1998)(holding no right to jury trial for § 1132(a)(1)(B) or (a)(3) claims); *McDougall v. Pioneer Ranch Ltd. P'ship*, 494 F.3d 571, 576 (7th Cir. 2007)(holding general rule in ERISA cases is that there is no right to a jury trial because ERISA's antecedents are equitable, not legal); *Mathews v. Sears Pension Plan*, 144 F.3d 461, 466-68

Moreover, this Court has denied similar petitions for certiorari on at least three occasions: *McDougall v. Pioneer Ranch Ltd. Partnership*, 494 F.3d 571, 576 (7th Cir. 2007), *cert. denied*, 128 S.Ct. 884 (2008); *Langlie v. Onan Corp.*, 192 F.3d 1137, 1141 (8th Cir. 1999), *cert. denied*, 529 U.S. 1087 (2000); *Borst v. Chevron Corp.*, 36 F.3d 1308, 1324 (5th Cir. 1994), *cert. denied*, 514 U.S. 1066 (1995); and, more likely, on seven occasions: *Tischman v. ITT/Sheraton Corp.*, 145 F.3d 561, 568 (2d Cir. 1998), *cert. denied*, 525 U.S. 963 (1998); *Mathews v.*

(7th Cir. 1998)(holding general rule in ERISA cases is that there is no right to a jury trial because ERISA's antecedents are equitable, not legal); *Wardle v. Cent. States Se. & Sw. Areas Pension Fund*, 627 F.2d 820, 827-30 (7th Cir. 1980)(holding no right to jury trial for § 1132(a)(1)(B) claims); *Langlie v. Onan Corp.*, 192 F.3d 1137, 1141 (8th Cir. 1999)(holding there is no right to a jury trial under ERISA); *In re Vorpahl*, 695 F.2d 318, 321 (8th Cir. 1982)(holding no right to jury trial for § 1132(a)(1)(B) or (a)(3) claims); *Thomas v. Or. Fruit Prods. Co.*, 228 F.3d 991, 996-97 (9th Cir. 2000)(holding no right to jury trial for § 1132(a)(1)(B) or (a)(3) claims); *Adams v. Cyprus Amax Minerals Co.*, 149 F.3d 1156, 1162 (10th Cir. 1998)(holding no right to jury trial for § 1132(a)(1)(B) claims); *Zimmerman v. Sloss Equip., Inc.*, 72 F.3d 822, 830 (10th Cir. 1995)(affirming district court's decision to deny jury trial on ERISA claims); *Broaddus v. Fla. Power Corp.*, 145 F.3d 1283, 1287 n.** (11th Cir. 1998)(holding district court did not err in striking jury demand on ERISA claims because relief under ERISA is limited to equitable remedies); *Chilton v. Savannah Foods & Indus., Inc.*, 814 F.2d 620, 623 (11th Cir. 1987)(holding no right to jury trial for under § 1132(a)(1)(B) or (a)(3) claims); *Howard v. Parisian Inc.*, 807 F.2d 1560, 1567 (11th Cir. 1987)(holding no right to jury trial for § 1132(a)(1)(B) claims).

Sears Pension Plan, 144 F.3d 461, 466-68 (7th Cir. 1998), *cert. denied*, 525 U.S. 1054 (1998); *Cox v. Keystone Carbon Co.*, 894 F.2d 647, 648-50 (3d Cir. 1990), *cert. denied*, 498 U.S. 811 (1990); *Wardle v. Central States Southeast & Southwest Areas Pension Fund*, 627 F.2d 820, 827-30 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981). As indicated above, the appellate case law has not shifted since this Court denied the foregoing petitions.[2]

Based upon the unanimity of the Courts of Appeals and the previous decisions of this Court, no compelling reason exists to grant review of Question No. 1 of the Petition.

B. In Addition, or in the Alternative, the Eleventh Circuit's Decision is Consistent with this Court's Test for a Jury Trial Under the Seventh Amendment.

Even if this Court were to review Question No. 1, it would still conclude that jury trials are unavailable for § 1132(a)(1) or (3) claims. Jury trials are generally available for legal, but not equitable, claims. In determining whether a jury trial is available under the Seventh Amendment for statutory claims, this Court looks to Congressional

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[2] In addition, the relevant text of ERISA has not changed since its enactment some thirty-five years ago.

intent. Since ERISA is silent as to jury trials, the Congressional intent is not apparent. Therefore, the next step is to examine how similar actions were treated before the merger of courts and whether the remedy sought is legal or equitable in nature. The second inquiry -nature of the remedy- is the most important. *Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 565 (1990).

Importantly, the text of § 1132(a)(3) explicitly provides for only injunctive and "other appropriate, equitable relief." This Court has repeatedly indicated that § 1132(a)(3) only permits equitable relief. *Great-West* at 210-12; *see also Aetna Health, Inc. v. Davila*; 542 U.S. 200, 215 (2004); *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 256-59 (1993).

Assuming a breach of fiduciary duty claim is available under § 1132(a)(1), such claims are historically equitable in nature. A participant may only recover benefits, and enforce and clarify rights under an ERISA plan. These remedies are quintessentially equitable in nature. *Russell*, 473 U.S. at 144; *Thomas v. Or. Fruit Prods. Co.*, 228 F.3d 991, 996-97 (9th Cir. 2000); *Adams v. Cyprus Amax Minerals Co.*, 149 F.3d 1156, 1162 (10th Cir. 1998); *DeFelice v. Am. Int'l Life Assurance Co. of N.Y.*, 112 F.3d 61, 64-65 (2d Cir. 1997); *Blake v. Unionmutual Stock Life Ins. Co. of Am.*, 906 F.2d 1525, 1526-27 (11th Cir. 1990). In fact, Rolland seems to concede that § 1132(a)(1) actions are equitable. (Pet. 5-6.)

Based upon the foregoing, the Seventh Amendment does not compel a right to a jury trial for § 1132(a)(1) or (3) claims.[3] Thus, Question No. 1 does not warrant review by this Court.

C. *Great-West* does not Compel a Review of the Eleventh Circuit's Decision.

Rolland argues the Court's *Great-West* decision supports the right to a jury trial under ERISA. Rather, *Great-West* actually supports Textron's position. First, *Great-West* did not even remotely address jury trials under ERISA. *Great-West* involved an insurer's contractual indemnity claim under § 1132(a)(3) against the beneficiary for reimbursement of medical expenses paid to the beneficiary by a third-party. *Id.* at 207. This Court reiterated several important ERISA principles. It stated:

> We have observed repeatedly that ERISA is a comprehensive and reticulated statute, the product of a decade of congressional study of the Nation's private employee benefit system. We have therefrom been especially

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[3] Petitioner's partial quote of Justice Scalia's concurrence in *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 730-31 (1999) is misleading. The quoted section simply illustrates the decision's focus that all Section 1983 actions are tort-based regardless of various alternative theories or remedies, and thus, a jury trial is available.

> reluctant to tamper with the enforcement scheme embodied in the statute by extending remedies not specifically authorized by its text. Indeed, we have noted that ERISA's carefully crafted and detailed enforcement scheme provides strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly.

Id. at 209 (citations and quotations omitted).

Great-West then reiterated that § 1132(a)(3) only permits "equitable relief." *Id.* at 210. The *Great-West* Court also confirmed that *Mertens* stands for the proposition that "equitable relief means something less than all relief and the term equitable relief in § 1132(a)(3) must refer to the categories of relief that were typically available in courts of equity." *Mertens*, 508 U.S. at 255-56. *Great-West* concluded the claim was a contractual, or legal, claim, which could not be pursued under § 1132(a)(3). *Great-West* can not be reasonably interpreted to stand for the proposition that if Rolland characterizes his remedy as a legal remedy, he somehow is entitled to a jury trial under a statute that authorizes only equitable relief. In fact, most lower courts have recently (and soundly) rejected Rolland's proposed interpretation of *Great-West*. *Beesley v. Int'l Paper Co.*, No. 06-703 DRH, 2009 WL 260782, at *5 (S.D. Ill. Feb. 2, 2009); *George v. Kraft Foods Global, Inc.*, Nos. 07C 1713, 07C 1954, 2008

WL 780629, at *3 (N.D. Ill. Mar. 20, 2008); *Fowler v. Aetna Life Ins. Co.*, No. C08-03463 WHA, 2008 WL 4911172, at *5 (N.D. Cal. Nov. 13, 2008); *Graham v. Hartford Life & Acc. Ins. Co.*, No. 03-CV-0144-CVE-SAJ, 2008 WL 4826314, at *3 (N.D. Okla. Oct. 29, 2008).

Based on the foregoing, *Great-West* does not warrant a review of Question No. 1.

II. The Eleventh Circuit's Decision that Rolland's Preempted State Law Fraud Claim Should not be Reinstated Upon a Failure to Prove His ERISA Claim does not Warrant Review by this Court.

Rolland requests this Court to review whether his preempted state law fraud claim(s) should be reinstated after he failed to prove several elements of his ERISA claims(s). In essence, Plaintiff requests this Court to declare that if an ERISA claim is unsuccessful on the facts, his well-pleaded state law claim(s) is no longer preempted by ERISA. The Court should deny Rolland's request because: he has waived his rights to review; the request would eviscerate the law of ERISA preemption; it represents nothing more than a thinly veiled attempt at a second bite at the apple which would ultimately fail; and, would promote judicial inefficiency.

A. Rolland Waived his Right of Review.

Rolland failed to preserve Question No. 2 before the District Court. A petitioner must properly preserve an argument before the district court. *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 404-05 (2006); *McMahon v. Presidential Airways, Inc.*, 502 F.3d 1331, 1356 (11th Cir. 2007); *Millennium Partners, L.P. v. Colar Storage, LLC*, 494 F.3d 1293, 1304 (11th Cir. 2007). At summary judgment, Rolland conceded his state law fraud claims(s) were preempted and those claims were dismissed. Thereafter, Rolland did not seek, either at trial or subsequently through post-trial motions under the Fed. R. Civ. P. 52(b) or 59, to have his state law fraud claims(s) reinstated. Rolland's inaction should bar any consideration of the issue. *Unitherm*, 546 U.S. at 404-05; *McMahon*, 502 F.3d at 1356; *Millennium*, 494 F.3d at 1304.

B. Rolland Impermissibly Requests this Court to Re-Write 29 U.S.C. § 1144(a).

Rolland attempts a two-prong approach to, *post hoc*, escape ERISA (the very statute under which he decided to sue Textron). First, Rolland inappropriately seeks to re-characterize and re-focus ERISA's preemption analysis on whether a plaintiff

can be successful, at the outset, under § 1132(a), and if not, his well-pleaded complaint should proceed under state law. Second, Rolland incorrectly claims Textron was immune from liability under ERISA solely because the District Court found it was not acting in a fiduciary capacity.

Rolland requests this Court to reverse and re-write ERISA preemption case law and § 1144. Rolland's proposed methodology is to consider each alleged injury (a lack of disability coverage) as being caused by another's alleged illegal act (Textron's misrepresentations) from which the law must provide a cause of action and correspondingly sufficient remedy(ies). When, in Rolland's view, he is faced with the proverbial square peg and round hole, he requests this Court to re-write decades of ERISA preemption case law so he can proceed with a second lawsuit after failing to prove multiple elements of his ERISA claim(s). Rolland's approach is inappropriate. ERISA preemption looks broadly at the nature of the claim, not whether a specific defendant may have a defense.

ERISA's preemptive scope is intentionally broad and has been described as follows:

> The breadth of [§ 1144(a)'s] pre-emptive reach is apparent from the section's language. A law relates to an employee benefit plan, in the normal sense of the phrase, if it has a

> connection with or reference to such a plan. . . . We must give effect to this plain language unless there is good reason to believe Congress intended the language to have some more restrictive meaning. . . .
>
> In fact, however, Congress used the words relate to in [§ 1144(a)] in their broad sense. To interpret [§ 1144(a)] to preempt only state laws specifically designed to affect employee benefit plans would ignore the remainder of [§ 1144]. . . .
>
> Nor, given the legislative history, can [§ 1144(a)] be interpreted to pre-empt only state laws dealing with the subject matters covered by ERISA-reporting, disclosure, fiduciary responsibility, and the like. The bill that became ERISA originally contained a limited pre-emption clause, applicable only to state laws relating to the specific subjects covered by ERISA. The Conference Committee rejected these provisions in favor of the present language, and indicated that the section's pre-emptive scope was as broad as its language.

Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-98 (1983)(citations and quotations omitted); *see also FMC Corp. v. Holliday*, 498 U.S. 52, 58 (1990). ERISA's preemptive effect is so broad it converts state law claims into federal claims under the well-pleaded complaint rule. *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 65-66 (1987).

In *Aetna Health, Inc. v. Davila*, this Court summarized the interface of ERISA preemption and the remedial scheme under § 1132(a) as follows:

> The purpose of ERISA is to provide a uniform regulatory regime over employee benefit plans. To this end, ERISA includes expansive pre-emption provisions, which are intended to ensure that employee benefit plan regulation would be exclusively a federal concern.
>
> ERISA's comprehensive legislative scheme includes an integrated system of procedures for enforcement. This integrated enforcement mechanism is a distinctive feature of ERISA, and essential to accomplish Congress' purpose of creating a comprehensive statute for the regulation of employee benefit plans. As the Court said:
>
> The detailed previsions of [§ 1132(a)] set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under the state law that Congress rejected in ERISA. The six carefully integrated civil enforcement provisions found

> in [§ 1132(a)] of the statute as finally enacted provide strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly.
>
> Therefore, any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted.

542 U.S. at 208-09 (citations and quotations omitted).

Rolland sought coverage/benefits under the Plan and/or money for the value of the Plan benefits. There is no doubt Textron's fully-insured plan is an ERISA welfare plan under § 1002(1). Certainly, Rolland's state law claim(s) squarely duplicates, supplements and/or supplants § 1132(a)(1) and/or (3). In fact, Rolland did not even attempt to fully mask his ERISA claim(s) in a well-pleaded complaint. Rather, Rolland specifically pled alternative state law and ERISA causes of action based upon the exact same facts. Rolland's claims also require the District Court to apply and interpret the Plan. (Pet. App. 39-42.) As a result, ERISA is Rolland's exclusive remedy. *Davila*, 542 U.S. at 208-11; *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 52 (1987); *DiFelice v. Aetna U.S. Healthcare*, 346 F.3d 442, 457 (3d Cir. 2003); *Rego v. Westvaco Corp.*, 319 F.3d 140, 148 (4th

Cir. 2003); *Hampers v. W.R. Grace & Co., Inc.*, 202 F.3d 44, 51 (1st Cir. 2000); *Smith v. Dunham-Bush, Inc.*, 959 F.2d 6, 11 (2d Cir. 1992); *Lee v. E.I. DuPont de Nemours & Co.*, 894 F.2d 755, 756-58 (5th Cir. 1990).

As indicated, § 1132(a) represents a legislative compromise and a cause of action and full array of remedies may not exist for every alleged wrong. Properly relying upon *Great-West* and *Mertens*, several lower courts have recognized, and refused to alter, these alleged "gaps" in ERISA's enforcement scheme so the preempted state law claims have a corresponding ERISA cause of action and remedy. *Amschwand v. Spherion Corp.*, 505 F.3d 342, 348 (5th Cir. 2007), *cert. denied*, 128 S.Ct. 2995 (2008); *see also Goeres v. Charles Schwab & Co.*, 220 F. App'x 663 (9th Cir. 2007), *cert. denied*, 128 St.Ct. 2994 (2008); *Alexander v. Bosch Auto. Sys.*, 232 F. App'x 491, 496-99 (6th Cir. 2007), *cert. denied*, 128 S.Ct. 2995 (2008); *Hampers*, 202 F.3d at 51; *Smith*, 959 F.2d at 11; *Rego*, 319 F.3d at 148; *Lee*, 894 F.2d at 756-58. These courts have properly concluded that Congress, not the courts, are charged with modifying ERISA's text. Similarly, Question No. 2 does not warrant review by this Court because to the extent Rolland is without a corresponding ERISA action or remedy for his preempted state law claim, Congress is responsible for revising ERISA.

C. Rolland was not without an ERISA Cause of Action or Remedy.

Even if the Court was inclined to fill in ERISA's alleged "gaps", this case does not present a situation in which Rolland, contrary to his assertions, was without an ERISA cause of action or potential remedy. Textron was not simply "exempted" or "immune" from ERISA solely because the District Court properly concluded Textron was not acting as an ERISA fiduciary.

The District Court specifically and fully analyzed Rolland's ERISA fraud/breach of fiduciary duty claim. (Pet. App. 31-36.) However, Rolland simply failed to present sufficient evidence to prove several other elements of his ERISA claim, apart from Textron's fiduciary status. The District Court concluded, among other things, Textron did not intentionally deceive the Rolland and Rolland did not reasonably rely upon Textron's representations.[4] Last, the District Court concluded that even if it awarded Rolland coverage under the Plan and/or were to analyze the measure of Rolland's damages, he would not have qualified for benefits under the Plan. Hence, Rolland suffered no damages. Intent to deceive, reasonable reliance and damages are essential elements of all fraud/intentional

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[4] In fact, the District Court basically found Petitioner fabricated this entire case. (Pet. App. 38-39.)

misrepresentation types of claims, whether grounded in ERISA, other statutes or common law. Therefore, even if this Court was inclined to revise or expand § 1132(a), this case presents an inappropriate vehicle because, on the evidence adduced, Rolland's claims would still fail.

D. Rolland's Position Promotes Judicial Inefficiencies.

Judicial economy is an important tenet of American jurisprudence. *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 352-53 (1988); *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966). Allowing Rolland to reinstate state law fraud claim(s) after failing to prove his preempted ERISA claim(s) would substantially undermine judicial economies. In essence, ERISA defendants would face two trials – an ERISA bench trial in federal court and then a state law jury trial in either state or federal court. Such a procedure is not desirable public policy and undermines the notion of one civil trial for each alleged wrong. *Cohill*, 484 U.S. at 352; *Gibbs*, 383 U.S. at 726. Thus, Question No. 2 does not warrant consideration by this Court.

CONCLUSION

For the foregoing reasons, Rolland's petition for a writ of certiorari should be denied.

Respectfully submitted,

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